

APPENDIX K: BONNEVILLE SHORELINE TRAIL (BST) LIABILITY ISSUES





Bonneville Shoreline Trail Liability Issues

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Introduction

The purpose of this outline is to explain some of the legal liability concepts that might be relevant if someone suffers an injury while using the Bonneville Shoreline Trail. This outline addresses the potential liability of private individuals who own sections of the trail or property adjoining it. It also covers the potential liability of local government agencies owning or maintaining sections of the trail.

The information appearing in this outline is presented for general information purposes only. It is not intended to serve as advice on any specific problem or issue and should not be relied upon for that purpose. Comments will be welcomed by the author at the e-mail address listed above.

Liability of Private Landowners

Common Law Liability

Landowner or "premises" liability results from ownership of land on which an accident occurs. The elements of landowner liability are:

- ❖ ownership of land;
- ❖ accident resulting from the condition of the land (this includes buildings and other improvements); and
- ❖ proof that the owner breached the applicable duty of care to the injured party. See generally, Restatement (Second) of Torts §§ 329-343 (Utah 1967).

The duty of care depends on the injured party's status. *Tjas v. Proctor*, 591 P.2d 438 (Utah 1979).

The landowner has no duty to warn, no duty to protect and is liable only for malicious injury to a trespasser (someone who illegally enters posted or enclosed property). *Weber v. Springville City*, 725 P.2d 1360 (Utah 1986).



To a licensee (an invited social guest or someone who is allowed on property but not invited), the landowner has a duty to warn of known dangers, but has no duty to protect or to make the property safe for the licensee. *Stevens v. Salt Lake County*, 478 P.2d 496 (Utah 1970).

The landowner has an affirmative duty to protect and to make the property safe for an invitee (a business patron or someone who enters the property in response to a public invitation). *Steele v. Denver & Rio Grande Western R.R. Co.*, 396 P.2d 751 (Utah 1964)

These common rules are effective in promoting safety and in providing compensation for injuries, but they tend to motivate landowners to post property and prosecute trespassers in order to get highest level of liability protection. Thus, they conflict with modern society's interest in encouraging public access to undeveloped private land.

Landowner Liability Act (U.C.A. §57-14-1 et seq.)

The Utah Legislature passed the Landowner Liability Act in order to modify the common law rules and to encourage owners to allow public access to private land.

The Act applies where:

- ❖ the use of the land is recreational;
- ❖ the landowner does not charge a fee to users; and
- ❖ the property is open to general public.

In these cases, the landowner's liability to all users is same as to trespassers under common law. In other words, liability is only for malicious injury.

Liability of Public Landowners

Sovereign Immunity

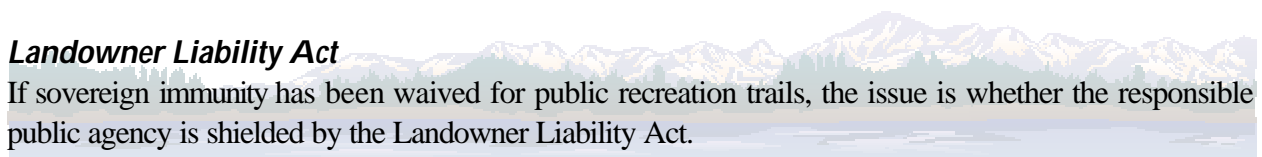
Under common law, government agencies are not liable for discretionary functions unless immunity has been waived by statute. *Madsen v. Borthick*, 658 P.2d 627 (Utah 1983)

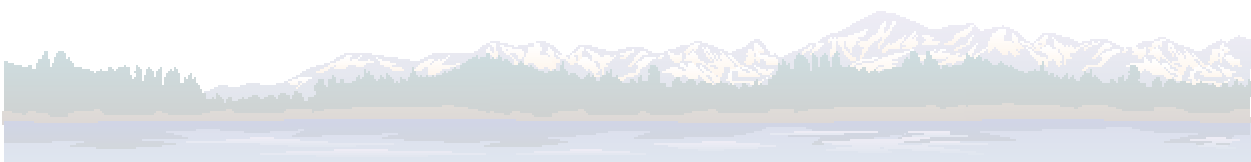
Immunity has been waived by statute for injuries caused by a "defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them" (U.C.A. §63-30-8) or by "any public building, structure, dam, reservoir, or other public improvement" (U.C.A. §63-30-9).

Do these waiver provisions include publicly owned recreation trails? The answer is unclear and the issue has not been tested in court.

Landowner Liability Act

If sovereign immunity has been waived for public recreation trails, the issue is whether the responsible public agency is shielded by the Landowner Liability Act.





Although the Act expressly refers to public as well as private lands, the Utah Supreme Court has ruled that it does not apply to a public playground that is neither rural, undeveloped nor the type of land that would be opened in response to the Act. See, *De Baritault v. Salt Lake City*, 913 P.2d 743 (Utah 1996).

It remains to be seen how the Court would apply the Landowner Liability Act to a publicly owned recreation trail across undeveloped land.

Recreational Land Use Immunity Act

Partly in response to the uncertainties raised by the *De Baritault* decision, the Legislature passed the Recreational Land Use Immunity Act (H.B. 107, 1999 General Session). This Act bars claims against counties and municipalities for injuries arising from the "inherent risks" of "recreational activities," which are defined to include "equestrian activity" "hiking" and "bike riding." By its terms, this Act would appear to bar most claims arising from allegedly unsafe trail conditions.

The Recreational Land Use Immunity Act has not been tested in court. There may be some concern that the Act violates Article 1, section 11 of the Utah Constitution. See, *Day v. State of Utah*, 369 Utah Adv. Rep. 14 (May 11, 1999). However, the Utah Supreme Court has applied a similar statute relating to ski areas (U.C.A. §78-27-51 et seq.) and has not found it to be unconstitutional.

Specific Trail Considerations

Publicly Owned Trails, with Adjoining Private Property

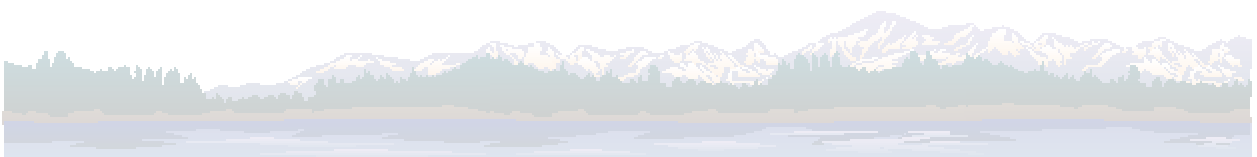
An adjoining private landowner will typically have no liability for accidents on publicly owned trails since the landowner does not own the trail.

The public landowner will probably be shielded either by the Landowner Liability Act or the Recreational Land Use Immunity Act.

The Landowner Liability Act will shield the private owner from accidents on adjoining private property if the property is open.

The greater risk is from accidents on adjoining private property that is posted. The Landowner Liability Act will not apply since the property is not open, but the owner may be subject to a common law claim that the injured party was a licensee because the owner did not adequately enforce the closure. See, *Stevens v. Salt Lake County*, 478 P.2d 496 (Utah 1970).

At least one local ordinance (Summit County Ordinance No. 196) specifically prohibits users from leaving public trails without the adjoining owner's express consent. This potentially solves the dilemma of the owner who wants to restrict access, but who does not want the burden of constant enforcement.



Privately Owned Trails, Subject To A Public Right Of Way

When the private party retains ownership of the trail and sells an easement for a public right of way across the trail, the liability picture is less clear.

It is possible that a court would rule that the Landowner Liability Act does not shield an owner who has sold a public easement. If so, liability could be as to a licensee or an invitee (see above).

In 1997, the Landowner Liability Act was amended to specifically cover cooperative wildlife management units, where a limited number of hunters can buy permits from the State who remits a portion of the proceeds to participating landowners. A similar amendment might be needed for trail easements.

